

Summary of Interested Parties Meeting

Proposed Regulation § 24465, Transfer of Appreciated Property to an Insurer

- I. **Administration:** On March 8, 2011 at 1:00 p.m., members of the public attended an interested parties meeting at the Franchise Tax Board's offices in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance. The session was to be tape recorded for reference but there would be no attribution of comments and no transcript. However, there were technical difficulties and no recording was available for purposes of preparing this summary.

The Moderator, Tommy Leung, listed the two documents available as handouts: notice of the meeting and discussion topics, all of which were posted online. A summary of the interested parties meeting would be posted online.

The purpose of the meeting was for the public to provide comments on Revenue and Taxation Code section 24465(c) (record keeping) and (f) (IRC section 355 distributions where the distributor is an insurer and the distributee is not an insurer). Discussion then proceeded through the discussion topics document.

- II. **Discussion:** The discussion was organized topically, section 24465(f) distributions first, and then section 24465(c) record keeping requirements.

IRC Section 355 Distributions: To facilitate the discussion, staff drew a diagram of a multi-tiered corporate structure, whereby P Corp. owned 100% of A Corp., which in turn owned 100% of X Corp.; A Corp. is an insurer as defined by article XIII, section 28, of the California Constitution. Next, staff described the typical IRC section 355 distribution, wherein A Corp. would distribute its X Corp. stock to P Corp. via a dividend (spin-off), redemption (split-off), or liquidation (split-up). Because subdivision (f) was a provision inserted into AB 263 at the request of industry, staff requested comments and/or suggestions from the public that was either desirous and/or required to clarify its terms. One attendee asked whether the IRC section 367 provisions would be consulted; staff suggested that it might do so.

Recordkeeping. There was discussion regarding the filing of the annual disclosure statement in general, and specifically when the transferor is liquidated. Staff indicated the annual disclosure statement would include the names and identification numbers of the parties to the transaction, the date of the transaction, the type of asset being transferred, and the adjusted basis and fair market value of the asset being transferred. The initial disclosure would have this information and the apportionment factors at the time of the transfer; thereafter, there would be an annual disclosure statement. Inquiry was made as to whether the annual disclosure statement should contain raw data or just the apportionment factors of the transferor. One commentator questioned why information that is already on the tax return that was filed is also required to be on the annual statement. There was also concern expressed about how long it would be needed to track the transaction/make the disclosure statement. An attendee expressed a desire to have this regulation apply prospectively, to establish a de minimus rule, and that the recordkeeping and reporting rules be "uncomplicated."

With respect to how the recordkeeping obligations would be met where the transferor disappears, such as by liquidation, staff discussed having the insurer file the annual statement as the transferor no longer existed. Several attendees objected to any filing by the insurer as insurers do not file returns with FTB, but instead file annually with DOI. It was suggested that it should be the transferor's issue as to which entity should file the annual statement, and it should not concern FTB. There was also a suggestion that the attestation could be made by another C corporation member of the combined reporting group.